

AMENDED IN ASSEMBLY APRIL 29, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1265

Introduced by Assembly ~~Member~~ Members Perea and Alejo

February 27, 2015

An act to amend Section 143 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL’S DIGEST

AB 1265, as amended, Perea. Transportation projects: comprehensive development lease agreements.

Existing law authorizes the Department of Transportation and regional transportation agencies, as defined, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge certain users of those projects tolls and user fees, subject to various terms and requirements. These arrangements are commonly known as public-private partnerships. Existing law provides that a lease agreement may not be entered into under these provisions on or after January 1, 2017.

This bill would ~~extend this authorization indefinitely~~ *instead provide that a lease agreement shall not be entered into under these provisions on or after January 1, 2030*, and would delete obsolete cross-references and make technical changes to these provisions. *This bill would also include within the definition of “regional transportation agency” the Santa Clara Valley Transportation Authority, thereby authorizing the authority to enter into public-private partnerships under these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 143 of the Streets and Highways Code
2 is amended to read:
3 143. (a) (1) “Best value” means a value determined by
4 objective criteria, including, but not limited to, price, features,
5 functions, life-cycle costs, and other criteria deemed appropriate
6 by the department or the regional transportation agency.
7 (2) “Contracting entity or lessee” means a public or private
8 entity, or consortia thereof, that has entered into a comprehensive
9 development lease agreement with the department or a regional
10 transportation agency for a transportation project pursuant to this
11 section.
12 (3) “Design-build” means a procurement process in which both
13 the design and construction of a project are procured from a single
14 entity.
15 (4) “Regional transportation agency” means any of the
16 following:
17 (A) A transportation planning agency as defined in Section
18 29532 or 29532.1 of the Government Code.
19 (B) A county transportation commission as defined in Section
20 130050, 130050.1, or 130050.2 of the Public Utilities Code.
21 (C) Any other local or regional transportation entity that is
22 designated by statute as a regional transportation agency.
23 (D) A joint exercise of powers authority as defined in Chapter
24 5 (commencing with Section 6500) of Division 7 of Title 1 of the
25 Government Code, with the consent of a transportation planning
26 agency or a county transportation commission for the jurisdiction
27 in which the transportation project will be developed.
28 (E) *The Santa Clara Valley Transportation Authority established*
29 *pursuant to Part 12 (commencing with Section 100000) of Division*
30 *10 of the Public Utilities Code.*
31 (5) “Public Infrastructure Advisory Commission” means a unit
32 or auxiliary organization established by the Transportation Agency
33 that advises the department and regional transportation agencies
34 in developing transportation projects through performance-based
35 infrastructure partnerships.

1 (6) “Transportation project” means one or more of the following:
2 planning, design, development, finance, construction,
3 reconstruction, rehabilitation, improvement, acquisition, lease,
4 operation, or maintenance of highway, public street, rail, or related
5 facilities supplemental to existing facilities currently owned and
6 operated by the department or regional transportation agencies
7 that is consistent with the requirements of subdivision (c).

8 (b) (1) The Public Infrastructure Advisory Commission shall
9 do all of the following:

10 (A) Identify transportation project opportunities throughout the
11 state.

12 (B) Research and document similar transportation projects
13 throughout the state, nationally, and internationally, and further
14 identify and evaluate lessons learned from these projects.

15 (C) Assemble and make available to the department or regional
16 transportation agencies a library of information, precedent,
17 research, and analysis concerning infrastructure partnerships and
18 related types of public-private transactions for public infrastructure.

19 (D) Advise the department and regional transportation agencies,
20 upon request, regarding infrastructure partnership suitability and
21 best practices.

22 (E) Provide, upon request, procurement-related services to the
23 department and regional transportation agencies for infrastructure
24 partnership.

25 (2) The Public Infrastructure Advisory Commission may charge
26 a fee to the department and regional transportation agencies for
27 the services described in subparagraphs (D) and (E) of paragraph
28 (1), the details of which shall be articulated in an agreement entered
29 into between the Public Infrastructure Advisory Commission and
30 the department or the regional transportation agency.

31 (c) (1) Notwithstanding any other provision of law, only the
32 department, in cooperation with regional transportation agencies,
33 and regional transportation agencies, may solicit proposals, accept
34 unsolicited proposals, negotiate, and enter into comprehensive
35 development lease agreements with public or private entities, or
36 consortia thereof, for transportation projects.

37 (2) Projects proposed pursuant to this section and associated
38 lease agreements shall be submitted to the California Transportation
39 Commission. The commission, at a regularly scheduled public
40 hearing, shall select the candidate projects from projects nominated

1 by the department or a regional transportation agency after
2 reviewing the nominations for consistency with paragraphs (3)
3 and (4). Approved projects may proceed with the process described
4 in paragraph (5).

5 (3) The projects authorized pursuant to this section shall be
6 primarily designed to achieve the following performance
7 objectives:

8 (A) Improve mobility by improving travel times or reducing
9 the number of vehicle hours of delay in the affected corridor.

10 (B) Improve the operation or safety of the affected corridor.

11 (C) Provide quantifiable air quality benefits for the region in
12 which the project is located.

13 (4) In addition to meeting the requirements of paragraph (3),
14 the projects authorized pursuant to this section shall address a
15 known forecast demand, as determined by the department or
16 regional transportation agency.

17 (5) At least 60 days prior to executing a final lease agreement
18 authorized pursuant to this section, the department or regional
19 transportation agency shall submit the agreement to the Legislature
20 and the Public Infrastructure Advisory Commission for review.
21 Prior to submitting a lease agreement to the Legislature and the
22 Public Infrastructure Advisory Commission, the department or
23 regional transportation agency shall conduct at least one public
24 hearing at a location at or near the proposed facility for purposes
25 of receiving public comment on the lease agreement. Public
26 comments made during this hearing shall be submitted to the
27 Legislature and the Public Infrastructure Advisory Commission
28 with the lease agreement. The Secretary of Transportation or the
29 chairperson of the Senate or Assembly fiscal committees or policy
30 committees with jurisdiction over transportation matters may, by
31 written notification to the department or regional transportation
32 agency, provide any comments about the proposed agreement
33 within the 60-day period prior to the execution of the final
34 agreement. The department or regional transportation agency shall
35 consider those comments prior to executing a final agreement and
36 shall retain the discretion for executing the final lease agreement.

37 (d) For the purpose of facilitating those projects, the agreements
38 between the parties may include provisions for the lease of
39 rights-of-way in, and airspace over or under, highways, public
40 streets, rail, or related facilities for the granting of necessary

easements, and for the issuance of permits or other authorizations to enable the construction of transportation projects. Facilities subject to an agreement under this section shall, at all times, be owned by the department or the regional transportation agency, as appropriate. For department projects, the commission shall certify the department's determination of the useful life of the project in establishing the lease agreement terms. In consideration therefor, the agreement shall provide for complete reversion of the leased facility, together with the right to collect tolls and user fees, to the department or regional transportation agency, at the expiration of the lease at no charge to the department or regional transportation agency. At the time of the reversion, the facility shall be delivered to the department or regional transportation agency, as applicable, in a condition that meets the performance and maintenance standards established by the department or regional transportation agency and that is free of any encumbrance, lien, or other claims.

(e) Agreements between the department or regional transportation agency and the contracting entity or lessee shall authorize the contracting entity or lessee to use a design-build method of procurement for transportation projects, subject to the requirements for utilizing such a method contained in Chapter 6.5 (commencing with Section 6820) of Part 1 of Division 2 of the Public Contract Code, other than Sections 6821 and 6822 of that code.

(f) (1) (A) Notwithstanding any other provision of this chapter, for projects on the state highway system, the department is the responsible agency for the performance of project development services, including performance specifications, preliminary engineering, prebid services, the preparation of project reports and environmental documents, and construction inspection services. The department is also the responsible agency for the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the department or regional transportation agency.

(B) The department may use department employees or consultants to perform the services described in subparagraph (A),

1 consistent with Article XXII of the California Constitution.
2 Department resources, including personnel requirements, necessary
3 for the performance of those services shall be included in the
4 department's capital outlay support program for workload purposes
5 in the annual Budget Act.

6 (2) The department or a regional transportation agency may
7 exercise any power possessed by it with respect to transportation
8 projects to facilitate the transportation projects pursuant to this
9 section. The department, regional transportation agency, and other
10 state or local agencies may provide services to the contracting
11 entity or lessee for which the public entity is reimbursed, including,
12 but not limited to, planning, environmental planning, environmental
13 certification, environmental review, preliminary design, design,
14 right-of-way acquisition, construction, maintenance, and policing
15 of these transportation projects. The department or regional
16 transportation agency, as applicable, shall regularly inspect the
17 facility and require the contracting entity or lessee to maintain and
18 operate the facility according to adopted standards. Except as may
19 otherwise be set forth in the lease agreement, the contracting entity
20 or lessee shall be responsible for all costs due to development,
21 maintenance, repair, rehabilitation, and reconstruction, and
22 operating costs.

23 (g) (1) In selecting private entities with which to enter into
24 these agreements, notwithstanding any other provision of law, the
25 department and regional transportation agencies may utilize, but
26 are not limited to utilizing, one or more of the following
27 procurement approaches:

28 (A) Solicitations of proposals for defined projects and calls for
29 project proposals within defined parameters.

30 (B) Prequalification and short-listing of proposers prior to final
31 evaluation of proposals.

32 (C) Final evaluation of proposals based on qualifications and
33 best value. The California Transportation Commission shall
34 develop and adopt criteria for making that evaluation prior to
35 evaluation of a proposal.

36 (D) Negotiations with proposers prior to award.

37 (E) Acceptance of unsolicited proposals, with issuance of
38 requests for competing proposals. Neither the department nor a
39 regional transportation agency may award a contract to an

1 unsolicited bidder without receiving at least one other responsible
2 bid.

3 (2) When evaluating a proposal submitted by the contracting
4 entity or lessee, the department or the regional transportation
5 agency may award a contract on the basis of the lowest bid or best
6 value.

7 (h) The contracting entity or lessee shall have the following
8 qualifications:

9 (1) Evidence that the members of the contracting entity or lessee
10 have completed, or have demonstrated the experience, competency,
11 capability, and capacity to complete, a project of similar size,
12 scope, or complexity, and that proposed key personnel have
13 sufficient experience and training to competently manage and
14 complete the design and construction of the project, and a financial
15 statement that ensures that the contracting entity or lessee has the
16 capacity to complete the project.

17 (2) The licenses, registration, and credentials required to design
18 and construct the project, including, but not limited to, information
19 on the revocation or suspension of any license, credential, or
20 registration.

21 (3) Evidence that establishes that members of the contracting
22 entity or lessee have the capacity to obtain all required payment
23 and performance bonding, liability insurance, and errors and
24 omissions insurance.

25 (4) Evidence that the contracting entity or lessee has workers'
26 compensation experience, history, and a worker safety program
27 of members of the contracting entity or lessee that is acceptable
28 to the department or regional transportation agency.

29 (5) A full disclosure regarding all of the following with respect
30 to each member of the contracting entity or lessee during the past
31 five years:

32 (A) Any serious or willful violation of Part 1 (commencing with
33 Section 6300) of Division 5 of the Labor Code or the federal
34 Occupational Safety and Health Act of 1970 (P.L. 91-596).

35 (B) Any instance where members of the contracting entity or
36 lessee were debarred, disqualified, or removed from a federal,
37 state, or local government public works project.

38 (C) Any instance where members of the contracting entity or
39 lessee, or its owners, officers, or managing employees submitted

1 a bid on a public works project and were found to be nonresponsive
2 or were found by an awarding body not to be a responsible bidder.

3 (D) Any instance where members of the contracting entity or
4 lessee, or its owners, officers, or managing employees defaulted
5 on a construction contract.

6 (E) Any violations of the Contractors' State License Law
7 (Chapter 9 (commencing with Section 7000) of Division 3 of the
8 Business and Professions Code), including, but not limited to,
9 alleged violations of federal or state law regarding the payment of
10 wages, benefits, apprenticeship requirements, or personal income
11 tax withholding, or Federal Insurance Contributions Act (FICA)
12 withholding requirements.

13 (F) Any bankruptcy or receivership of any member of the
14 contracting entity or lessee, including, but not limited to,
15 information concerning any work completed by a surety.

16 (G) Any settled adverse claims, disputes, or lawsuits between
17 the owner of a public works project and any member of the
18 contracting entity or lessee during the five years preceding
19 submission of a bid under this article, in which the claim,
20 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
21 Information shall also be provided concerning any work completed
22 by a surety during this five-year period.

23 (H) If the contracting entity or lessee is a partnership, joint
24 venture, or an association that is not a legal entity, a copy of the
25 agreement creating the partnership or association that specifies
26 that all general partners, joint venturers, or association members
27 agree to be fully liable for the performance under the agreement.

28 (i) No agreement entered into pursuant to this section shall
29 infringe on the authority of the department or a regional
30 transportation agency to develop, maintain, repair, rehabilitate,
31 operate, or lease any transportation project. Lease agreements may
32 provide for reasonable compensation to the contracting entity or
33 lessee for the adverse effects on toll revenue or user fee revenue
34 due to the development, operation, or lease of supplemental
35 transportation projects with the exception of any of the following:

36 (1) Projects identified in regional transportation plans prepared
37 pursuant to Section 65080 of the Government Code.

38 (2) Safety projects.

39 (3) Improvement projects that will result in incidental capacity
40 increases.

1 (4) Additional high-occupancy vehicle lanes or the conversion
2 of existing lanes to high-occupancy vehicle lanes.

3 (5) Projects located outside the boundaries of a public-private
4 partnership project, to be defined by the lease agreement.

5 However, compensation to a contracting entity or lessee shall
6 only be made after a demonstrable reduction in use of the facility
7 resulting in reduced toll or user fee revenues, and may not exceed
8 the difference between the reduction in those revenues and the
9 amount necessary to cover the costs of debt service, including
10 principal and interest on any debt incurred for the development,
11 operation, maintenance, or rehabilitation of the facility.

12 (j) (1) Agreements entered into pursuant to this section shall
13 authorize the contracting entity or lessee to impose tolls and user
14 fees for use of a facility constructed by it, and shall require that
15 over the term of the lease the toll revenues and user fees be applied
16 to payment of the capital outlay costs for the project, the costs
17 associated with operations, toll and user fee collection,
18 administration of the facility, reimbursement to the department or
19 other governmental entity for the costs of services to develop and
20 maintain the project, police services, and a reasonable return on
21 investment. The agreement shall require that, notwithstanding
22 Sections 164, 188, and 188.1, any excess toll or user fee revenue
23 either be applied to any indebtedness incurred by the contracting
24 entity or lessee with respect to the project, improvements to the
25 project, or be paid into the State Highway Account, or for all three
26 purposes, except that any excess toll revenue under a lease
27 agreement with a regional transportation agency may be paid to
28 the regional transportation agency for use in improving public
29 transportation in and near the project boundaries.

30 (2) Lease agreements shall establish specific toll or user fee
31 rates. Any proposed increase in those rates not otherwise
32 established or identified in the lease agreement during the term of
33 the agreement shall first be approved by the department or regional
34 transportation agency, as appropriate, after at least one public
35 hearing conducted at a location near the proposed or existing
36 facility.

37 (3) The collection of tolls and user fees for the use of these
38 facilities may be extended by the commission or regional
39 transportation agency at the expiration of the lease agreement.
40 However, those tolls or user fees shall not be used for any purpose

1 other than for the improvement, continued operation, or
2 maintenance of the facility.

3 (k) Agreements entered into pursuant to this section shall include
4 indemnity, defense, and hold harmless provisions agreed to by the
5 department or regional transportation agency and the contracting
6 entity or lessee, including provisions for indemnifying the State
7 of California or the regional transportation agency against any
8 claims or losses resulting or accruing from the performance of the
9 contracting entity or lessee.

10 (l) The plans and specifications for each transportation project
11 on the state highway system developed, maintained, repaired,
12 rehabilitated, reconstructed, or operated pursuant to this section
13 shall comply with the department's standards for state
14 transportation projects. The lease agreement shall include
15 performance standards, including, but not limited to, levels of
16 service. The agreement shall require facilities on the state highway
17 system to meet all requirements for noise mitigation, landscaping,
18 pollution control, and safety that otherwise would apply if the
19 department were designing, building, and operating the facility.
20 If a facility is on the state highway system, the facility leased
21 pursuant to this section shall, during the term of the lease, be
22 deemed to be a part of the state highway system for purposes of
23 identification, maintenance, enforcement of traffic laws, and for
24 the purposes of Division 3.6 (commencing with Section 810) of
25 Title 1 of the Government Code.

26 (m) Failure to comply with the lease agreement in any significant
27 manner shall constitute a default under the agreement and the
28 department or the regional transportation agency, as appropriate,
29 shall have the option to initiate processes to revert the facility to
30 the public agency.

31 (n) The assignment authorized by subdivision (c) of Section
32 130240 of the Public Utilities Code is consistent with this section.

33 (o) A lease to a private entity pursuant to this section is deemed
34 to be public property for a public purpose and exempt from
35 leasehold, real property, and ad valorem taxation, except for the
36 use, if any, of that property for ancillary commercial purposes.

37 (p) Nothing in this section is intended to infringe on the authority
38 to develop high-occupancy toll lanes pursuant to Section 149.4,
39 149.5, or 149.6.

1 (q) Nothing in this section shall be construed to allow the
2 conversion of any existing nontoll or nonuser-fee lanes into tolled
3 or user fee lanes with the exception of a high-occupancy vehicle
4 lane that may be operated as a high-occupancy toll lane for vehicles
5 not otherwise meeting the requirements for use of that lane.

6 (r) The lease agreement shall require the contracting entity or
7 lessee to provide any information or data requested by the
8 California Transportation Commission or the Legislative Analyst.
9 The commission, in cooperation with the Legislative Analyst, shall
10 annually prepare a report on the progress of each project and
11 ultimately on the operation of the resulting facility. The report
12 shall include, but not be limited to, a review of the performance
13 standards, a financial analysis, and any concerns or
14 recommendations for changes in the program authorized by this
15 section.

16 (s) Notwithstanding any other provision of this section, no lease
17 agreement may be entered into pursuant to the section that affects,
18 alters, or supersedes the Memorandum of Understanding (MOU),
19 dated November 26, 2008, entered into by the Golden Gate Bridge
20 Highway and Transportation District, the Metropolitan
21 Transportation Commission, and the San Francisco County
22 Transportation Authority, relating to the financing of the U.S.
23 Highway 101/Doyle Drive reconstruction project located in the
24 City and County of San Francisco.

25 (t) *A lease agreement shall not be entered into under this section*
26 *on or after January 1, 2030.*